

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4783 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHUNILAL LALLUBHAI PATEL

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SB NANAVATI for Petitioner  
M/S A & D for Respondent No. 1  
SERVED for Respondent No. 2

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 04/05/96

ORAL JUDGEMENT

Chunilal Lallubhai Patel who was working as a driver in the police department since June 1976 has filed the present petition to challenge the order of recovery issued on 13.9.83 by the Deputy Commissioner of Police, Armed Police and Training, Ahmedabad.

2. The petitioner was driving a police van bearing Regn.No.GRG 1865 on 8.11.82 in Amraiwadi area for the

purpose of patrolling. When he was driving the above police van, a truck came with full head light from the opposite direction with full head lights. When the said truck was coming on the road one she buffalo was also coming on the road and in order to save the said she buffalo as well as the collision with the truck, he applied brakes, but as it was raining, the brakes did not work van slipped and his van dashed with the stationary Matador which resulted into damage to the cover of the headlights of the said police van.

3. Investigation about the said accident was carried out. No offence was registered against the present petitioner. But the papers of investigation and inquiry were forwarded to the superior officer. Thereafter, show cause notice was issued to the present petitioner on 1.8.83 to show cause as to why an amount of Rs. 246/- on account of causing damage to the said police van should not be recovered from him and why he should not be transferred. In pursuance to the said show cause notice, the petitioner gave his reply on 8.8.83 contending therein that there was no negligence on his part and that the accident in question was pure and simple accident and that he was not liable to pay any damages.

4. After receipt of the said reply, the Police Commissioner has passed an order on 14.9.83 as under:

"Office of the Commissioner of Police,

Ahmedabad City Police Notice

Dated 14th September 1983

Wednesday.

624/I/742

Reference:IRS/G.R. 1757/83.dtd.13.9.83

In connection with the accident occurred to Police Vehicle No. GRG 1875 on 8.11.82 on Narol-Naroda Road,opposite Ashapuri society, it is hereby ordered to recover Rs. 183.75 paisa by way of damages caused to the police vehicle from Police Driver Constable Shri Chunilal Lallubhai, B. No. 26 from his salary.

Police Inspector,M.T.Section is directed to give instructions to the said police driver and inform him about this recovery and send the report to this office after the amount is recovered.

Sd/-V.T.Shah  
Police Commissioner. "

The petitioner has come before this court to challenge the said order. Though the Commissioner of Police was made respondent no.1 in this petition, no affidavit in reply is filed.

5. I have quoted in verbatim the order passed by the police commission. If the said order is taken into consideration then it would be clear that no reasons are given by the person passing the said order as for what reasons and on what basis he has come to the conclusion that the amount of Rs. 183.75 is to be recovered by way of damages from the petitioner. In the show cause notice, claim of damages was of Rs. 246/- . The petitioner has contended in his reply that the panchnama of the damages was prepared at the time of inquiry and the damages were assessed at that time by the Investigating Officer to the tune of Rs. 50/- to 100/-. When the petitioner has contended that the actual damages were initially assessed between Rs. 50/- to 100/- and it was claimed by the respondents in the show cause notice that the damages were of Rs. 246/-, it was necessary to mention in the order the reasons for coming to the conclusion that the damages were of Rs. 183.75 p.

6. When the petitioner has given reply to the show cause notice and when he had denied and disputed the claim of making recovery of the damages caused to the vehicle by contending that the damages were not caused due to any negligence on his part' as per the provisions of the Rule 3 (1)(a-1) of the Bombay Police ( Punishments and Appeals) Rules 1956 and as per Rule 4 of the said Rules, a departmental inquiry ought to have been held before holding the petitioner liable. As per Rule 3(1) (a-1) of the Bombay Police (Punishments and Appeals) Rules 1956, a recovery from the pay of of the whole or part of any pecuniary loss caused to the Government by negligence or breach of order by the Government employee amounts to punishment and Rule 4 provides that no punishment under the said Rule shall be imposed on any police officer unless a departmental inquiry is conducted. From the order quoted above and in view of the averments made by the petitioner in the petition, it is quite obvious that no departmental inquiry was held in the instant case. Consequently, said order becomes illegal and invalid. I therefore hold that said order

will have to be quashed and set aside by allowing the present petition.

6. In the result, the petition is allowed. It is hereby declared that the order passed by the Police Commissioner, Ahmedabad City, Ahmedabad on 13.9.83 to recover the amount of Rs. 183.75 by way of damages from the pay and allowances of the present petitioner is illegal and invalid and said order is hereby quashed and set aside. If the amount mentioned in the petition happened to be recovered from the pay and allowances of the petitioner, then the same should be refunded to him forthwith. Rule is made absolute.

In the circumstances I direct that the parties to bear their own costs.